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Political Rights

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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1039th MEETING

Held at Headquarters, New York,
on Tuesday, 26 March 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. DIMITRIJEVIĆ (Vice-Chairman)

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Consideration of reports submitted by States parties under article 40 of the Covenant

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of India (CCPR/C/37/Add.13)

1. At the invitation of the Chairman, Mr. Ramaswamy (India) took a place at the Committee table.

2. Mr. RAMASWAMY (India), introducing the second report of India (CCPR/C/37/Add.13), said that modern-day India had a tolerant, eclectic society where people of many different faiths and persuasions had joined together to build the world's largest democracy, in which universally recognized human rights and fundamental freedoms were guaranteed to all. The Indian Constitution, which had entered into force on 26 January 1950, derived its basic inspiration from India's history and from other constitutional systems. The Constitution expressly prohibited discrimination on the grounds of religion, race, caste, sex or place of birth, and it prohibited the State from denying any person equality before the law or equal protection under the law within the territory of India. The Constitution contained special provisions which favoured the backward sectors of Indian society, specifically the scheduled castes and scheduled tribes, and women and children.

3. India was a secular and democratic republic where freedom of thought, expression, belief, faith and worship were guaranteed to all citizens. Freedom of religion was one of the fundamental rights guaranteed by the Constitution. The customary and codified personal laws of people of different religions, beliefs and faiths were fully guaranteed and protected. In India, every religious denomination had the right to establish and maintain institutions for religious or charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with the law. Secularism was the very foundation of Indian democracy and the basis of India's unity in diversity.

4. The Constitution provided for parliamentary democracy with division of powers among the legislature, the executive and the judiciary. The Constitution established a union of states with a federal structure. The legislatures, both at the central level and in the states, consisted of directly elected representatives of the people. There was universal adult franchise, which ensured popular participation in political processes at all levels. The right of political association and activity was guaranteed. The executive was also accountable to the people through the legislature.

5. The rule of law was the very core of the Indian Constitution and legal system. The constitutionality of legislation in India was subject to review by the courts, and the exercise of executive power was subject to different forms of judicial review. The judiciary in India was independent at all levels.

(Mr. Ramaswamy, India)

6. There had been a number of important developments since India had submitted its initial report in 1984. A new state of Mizoram had come into existence subsequent to the enactment of the State of Mizoram Act of 1986. Also, the former Union Territory of Arunachal Pradesh had been granted statehood on 20 February 1987. Goa had become a full-fledged state on 30 May 1987, and Daman and Diu had been retained as a Union Territory. The Constitution (Fifty-ninth Amendment) Act of 1988 was no longer in force. Under the Constitution (Sixty-third Amendment) Act of 1989, the proviso to article 356 (5), and article 359 A, of the Constitution had been omitted; thus, the pre-1988 situation had been restored.

7. In 1987, the Parliament had passed the Legal Service Authorities Act (Act 39 of 1987), which provided for legal aid on a statutory basis, and for the establishment of legal service authorities at central, state and district levels. The Parliament had passed the Religious Institutions (Prevention of Misuse) Act of 1988 (Act 41 of 1988), which sought to prevent the misuse of religious institutions for political and other purposes. The Representation of the People Act had been amended, reducing the voting age from 21 to 18 years in order to give effect to the Constitution (Sixty-first Amendment) Act of 1988.

8. Since the Human Rights Committee's consideration of India's initial report in 1984, several elections had been held in India. General elections to the Ninth Lok Sabha had been held on 22, 24 and 26 November 1989. Simultaneous elections had been held to the legislative assemblies of Andhra Pradesh, Goa, Karnataka, Sikkim and Uttar Pradesh.

9. In connection with the adjudication of disputes relating to recruitment and conditions of service of persons appointed to public services and posts, the parliament had passed the Administrative Tribunals Act of 1985. Pursuant to that Act, the Union Government had set up the Central Administrative Tribunal in 1985, whose purpose was to provide speedy and inexpensive justice to central government employees. The Tribunal had regular branches in the states, and some of the states had also set up tribunals for state government employees.

10. The Parliament had passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 (Act 33 of 1989), which was aimed at providing further protection to the vulnerable sectors of Indian society. The Act defined the term "atrocity" and provided punishment for the commission of atrocities. The states were also obliged to provide adequate relief assistance to rehabilitate persons belonging to scheduled castes and scheduled tribes in such situations. The Act also provided for the establishment of special courts to try such offences.

11. India's popular democracy promoted healthy public opinion. The free press, the All-India Radio and the independent judiciary were the most important vehicles for stimulating public opinion and creating an atmosphere in which human rights could be observed and protected. The Indian press was a reliable ally in the pursuit of truth and the guarantee of civil and political rights to all in India.

(Mr. Ramaswamy, India)

12. The Supreme Court of India, and the High Courts in the individual states, ensured the effective implementation of human rights in India through the liberalized review of administrative action. Such liberalization had led to the growth of public interest litigation, the provision of compulsory legal aid to the needy, and the seizure of court jurisdiction in such matters even on the basis of postcards or telegrams received from individuals or of stories or reports published in magazines or newspapers. Moreover, in the exercise of jurisdiction in such matters, strict adherence to locus standi was in large measure dispensed with, and the courts could be pressed into action either at the instance of a member of the public or, suo motu, by the court. Certain public interest ligitant groups and individuals approached the judiciary for appropriate remedies in their specific and particular areas of interest in the field of human rights. Broadly, there were groups dealing with such issues as police brutality, women's rights, pollution control and other environmental factors, the rights of the poor, prison conditions, bonded labour, child abuse and sometimes even government policies affecting human rights. In general, the Indian judiciary seemed to be more lenient towards such litigants and litigant groups as compared with the claims of private individuals based on the principles of cause of action and locus standi.

13. The Indian judiciary had made an immense contribution to the safeguarding of other major areas of human rights, including the right to life and personal liberty, freedom of expression and speech, and the protection of minorities and minority institutions. The philosophy of the death penalty had been radically transformed. While the Supreme Court had upheld the legality of the death penalty under the Indian Constitution, it had indicated that the death penalty should be used as an exception in extremely rare cases, and even then only as a deterrent. The right to liberty had also been interpreted as covering several aspects of an individual's activities, ranging from reputation to character to involuntary disappearances. Perhaps it was only in India that freedom of expression and speech were interpreted to include access to, and the price of, newsprint. In that connection, the levy of customs duties had been examined in order to assess whether such duties constituted a reasonable restriction of freedom of speech and expression. Minorities and minority institutions in India, which covered such aspects as education, public employment and preservation of minority languages, cultures and traditions, were protected by the judiciary.

Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3) of the Covenant) (section I of the list of issues)

14. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of India, namely: (a) the status of the Covenant within the Indian legal system and the resolution of possible contradictions between domestic legislation and the Covenant; (b) any cases during the period under review where the provisions of the Covenant had been directly invoked before the courts or referred to in court decisions or where a law had been disregarded by a court on the grounds that it was contrary to the Covenant; (c) measures which had been taken since the consideration of India's initial report to disseminate information on the rights recognized in the Covenant, particularly among the various minority communities in their own languages; and (d) factors and difficulties affecting the

(The Chairman)

implementation of the Covenant, particularly the impact of the size of India's population and its culture and traditions on the implementation of the human rights contained in the Covenant.

15. Mr. RAMASWAMY (India) said, with respect to section I (a) of the list of issues, that in his country the rules of international law were incorporated into national law and considered to be part of it unless they were in conflict with an Act of Parliament; national courts were under an obligation, within reasonable limits, to interpret national law so as to avoid confrontation with the community of nations or the well-established principles of international law. In 1990 the Supreme Court of India had observed that in the event of doubt the national rule was to be interpreted in accordance with the international obligations of the State. The rights included in the Covenant had already found their place in the Indian Constitution and other laws, and so the question of contradictions between Indian legislation and the Covenant was purely hypothetical. No such contradictions had been encountered, and in the period under review Indian courts had not been required to adjudicate any case arising from such contradictions; had they been required to do so, they would have attempted to achieve an interpretation reconciling international law and national legislation.

16. With respect to section I (b), there had been cases during the period under review where the provisions of the Covenant had either been invoked before the courts by the parties or referred to suo moto by the courts themselves, and the general trend had been to base the claims on the rights of individuals as provided for in national legislation and to supplement the Covenant and its provisions in the assertion of those claims. For the most part, such claims had involved fundamental human rights and had been raised before the High Courts of the states or before the Supreme Court of India. To his knowledge there had not been any case where provisions of the Covenant had been invoked and disregarded by the courts.

17. With respect to section I (c), information on the rights recognized under the Covenant had been widely disseminated, and the citizens of India were well-acquainted with the basic human rights and fundamental freedoms embodied in it. In the event of alleged infringement of those rights, the public had ready access to the courts, of which there was an adequate number, and to qualified lawyers, numbering more than 650,000, who were intimately acquainted with the human rights and fundamental freedoms recognized in the Covenant.

18. There was a broadly based awareness of human rights in general and of political and civil rights in particular as a result of the efforts of the Government of India and its information agencies, and of radio and television programmes in all the country's languages. Much was done by the press, and discussions, seminars and symposia were held in a number of public forums; the voluntary agencies also played an important role in campaigning for implementation of civil and political rights, especially those relating to the right to life and the right to personal liberty. The Covenant, and other international instruments on human rights, had been translated into several Indian languages, and human rights, in the broadest sense, formed part of the curriculum and syllabus for children in school.

19. Mr. ANDO thanked the Indian delegation for its concise report which had sought to deal with a number of the questions raised during consideration of its initial report. With regard to the new jurisdiction, described as epistolary jurisdiction, which, according to paragraph 6 of the report, was in the process of evolution in India as a result of public interest litigation set in motion in the Supreme Court and some of the High Courts, he sought further elaboration of how it was institutionalized and made use of. As for human rights awareness and education, he asked whether the Covenant had been translated into India's minority languages, and how much human rights education had been undertaken among law enforcement officers, especially those in the police and the army who might be operating in emergency situations, in which human rights were most at risk. He was concerned to know how they were constrained, and to what extent their activities were monitored.

20. Mr. LALLAH said that compliance with the provisions of articles 2 (1), 2 (3)(a), 4 and 26 of the Covenant gave him particular cause for concern. In particular, he was worried about a series of laws that had been passed in India relating to terrorism, notably the Armed Forces (Special Powers) Act, which was applicable to various parts of the territory of India, especially the north-east, and which was apparently being extended to other parts of the country. It was his impression that the Act was a special kind of legislation which short-circuited the various guarantees laid down in the Code of Criminal Procedure, and possibly even short-circuited the guarantees to be found in the Indian Constitution itself; he wondered to what extent it was consistent with the obligations undertaken under the Covenant, especially article 4. The Armed Forces (Special Powers) Act enabled the army to supplement the inadequacies of the civilian authorities not only in the pre-trial stage but also in respect of powers of arrest and search. He asked to what extent the Act was in compliance with the obligations undertaken under the Covenant to bring a person to trial with the least possible delay and to provide guarantees for people's physical integrity.

21. He wished to know whether there were remedies in the event of officials committing transgressions. Section 4 of the Act enabled the military authorities to shoot, arrest, search and seize, and he was concerned to know whether the criminal procedure applied with respect to the minimum use of force, and the various guarantees, for example, with respect to the searching of women and the possibility of their suffering violations to their dignity and physical integrity, the limitation as to the time after which the military authorities were obliged to hand an arrested person over to the civilian authorities, and whether the investigation was carried out by military or civilian personnel.

22. There was an article in the Indian Constitution which guaranteed protection against arrest and detention in certain cases, and those guarantees raised a number of questions. The north-east of India was an area where there was not ready access to lawyers, and in a situation in which it had become necessary for the State to rely on non-civilian authorities to assist in the establishment of order, he suggested that steps should be taken to ensure that those military authorities effectively came under civilian control, and that people who ran a risk of suffering transgressions committed by the non-civilian authorities had ready access to redress.

(Mr. Lallah)

23. It was his understanding that the Armed Forces (Special Powers) Act had been the subject of constitutional action in 1983, and if that was so he would welcome information on the progress and outcome of that action.

24. Ms. CHANET sought clarification of the reservations which the Government of India had made upon accession to the Covenant, which amounted to restrictions with respect to a number of its articles and the possibility of whole sections of the Covenant not being applied, in particular the reservation referring to article 22 of the Indian Constitution regarding administrative detention, which permitted exclusion of the rights envisaged under article 9 of the Covenant. The Government of India had also made a reservation to article 13 of the Covenant, arguing that it reserved the right to apply its own legislation in respect of aliens. She asked why the Government of India had considered it useful to make a statement in respect of freedom of expression and assembly and the freedom to demonstrate, according to which all those freedoms were subject to possible restrictions which probably went beyond what was envisaged by the relevant articles of the Covenant.

25. She would welcome information as to whether the Government intended to accede to the Optional Protocol to the Covenant, permitting the Committee to receive and consider communications from individuals.

26. With reference to paragraph 6 of the report, she sought information concerning the rules which applied to the appointment, recruitment and advancement of magistrates, and any disciplinary sanctions to which they might be subject. She also wondered if there were circumstances in which they could be dismissed from office.

27. Mr. Dimitrijević (Vice-Chairman) took the Chair.

28. Mr. EL-SHAFEI asked how the new "epistolary jurisdiction" described in paragraph 6 of the report had been established, and how it was to be reconciled with the Armed Forces (Special Powers) Act, certain provisions of which did not permit legal recourse, particularly when acts were committed by military authorities or in certain states.

29. While it was understandable that Governments faced with the spectre of terrorism should take measures to protect the victims, he would appreciate more details on the meaning of the statement in the report that "these factors were exacerbated by chronic instability in the regional situation and growing external intervention in India's neighbourhood", and on the way in which the commitment of the Government of India to the protection of human rights had been negatively affected by that situation.

30. Lastly, he requested that the right of clarification of India's reservation to article 1 of the Covenant and asked what India's position would be on the question of areas disputed between sovereign Governments.

31. Mr. SERRANO CALDERA requested information on how the so-called epistolary jurisdiction had contributed to a new jurisprudence in the area of human rights and on the impact which the Armed Forces (Special Powers) Act had had on the constitutional framework for the protection of human rights.

32. Clarification was needed concerning the status of the Covenant under Indian law. From the report it appeared that the Covenant was supreme in the constitutional sphere while it appeared to be secondary to other legislative and executive provisions. He wished to know specifically whether the Covenant could be invoked in India to challenge the constitutionality of a law.

33. Mr. MYULLERSON said that India took its human rights responsibilities seriously, and notwithstanding the many difficulties which arose from its multicultural and multi-ethnic character it had made great efforts in the area. Referring to India's reservations to article 1 of the Covenant, whereby the Indian Government held that the right to self-determination applied only to peoples under foreign domination, he wondered what India's view was with regard to multinational or multi-ethnic States.

34. Mr. PRADO VALLEJO commended India's efforts to adopt legislation for the protection of human rights, but noted that problems occurred in India as they did elsewhere. What mattered was not just the human rights legislation theoretically in force but human rights practice also. There appeared sometimes to be a discrepancy between the sound human rights laws which India had enacted and the practical application of those laws.

35. Some questions asked during the Committee's consideration of India's initial report remained unanswered. It was not clear, for example, whether there were incompatibilities between the Covenant and the laws on human rights adopted by the Indian parliament.

36. There were problems of violence in India, affecting many areas of life. He wished to know what had been done to overcome the situations which had occasioned violence in the past. While there were sound laws in force in line with article 14 of the Covenant, at the same time the facts showed that in practice members of the police and the security forces committing human rights violations were never brought to trial, because to do so was not deemed to be in the public interest. Details should be provided on any efforts that were being made to ensure that legislation was effective in preserving respect for fundamental human rights.

37. Mr. FODOR found the information given with reference to certain articles of the Covenant to be rather thin. India had a detailed Constitution, on which the report had principally concentrated, but he would have appreciated it if more light had been shed on the secondary legislation relating to certain articles of the Covenant. With respect to section I, he referred to the statement in paragraph 6 of the report to the effect that even the Supreme Court could be pressed into action to provide immediate relief in the very first instance. In that connection, he wished to know whether, in the case of infringement of fundamental rights, the individual had the option of turning either to the local courts or to the Supreme

(Mr. Fodor)

Court directly. If the latter option existed, he wished to know its advantages or disadvantages, and in particular, if the Supreme Court exercised primary jurisdiction in a case, how that affected the right to appeal. Furthermore, he would be interested to know whether the High Courts and the Supreme Court were more readily trusted by the population than the local courts. Given that India was a society of many religions and ethnic groups, he wondered whether allegations of bias in the local courts were commonplace. He, too, sought more detailed explanations of the features of the new epistolary jurisdiction and the reasons that had necessitated its establishment.

38. Mrs. HIGGINS said that while from a common-law point of view she understood the theory behind the statement that the guarantees required by the Covenant were all present in existing Indian law, she was somewhat puzzled as to the practical application, given the reservations expressed, which suggested that the Covenant was to be interpreted in line with Indian law, rather than the other way round. She would appreciate a comment on that point.

39. She agreed with Mr. Lallah that the National Security (Amendment) Act and the Terrorist and Disruptive Activities (Prevention) Act entailed derogations from rights under the Covenant. Although occasioned by an emergency, those acts had not been proclaimed as emergency legislation. She wished to know why that was so, and why they had not been notified as derogations from the Covenant, as required by the Covenant itself. She noted, moreover, that no time-limit had been specified for some of the provisions. As the Covenant seemed to be subordinate to the Indian Constitution and there were derogations from it, some of them without time-limit, covering wide areas of Indian territory, she would appreciate a statement on how the Covenant could be said to apply in India.

40. Mr. AGUILAR, referring to paragraph 6 of the report, asked whether the Supreme Court was empowered to act in first instance on human rights violations routinely, or only in certain cases; and whether there were other courts of first instance whose rulings could be appealed to the Supreme Court. He would also like more information on the scope of the so-called epistolary jurisdiction, and how such legislation protected the large numbers of people who were illiterate.

41. Although the Committee had been assured that the Covenant had the force of law in India, especially since the landmark Supreme Court ruling of 1990, he agreed with Mrs. Higgins that India's reservations to the Covenant implied the reverse - that the Covenant was to be interpreted in accordance with the national laws.

42. He, too, was concerned that certain laws abrogating rights - such as the Armed Forces (Special Powers) Act and the Terrorist and Disruptive Activities (Prevention) Act - in effect established a continuing state of emergency, but had not been proclaimed as emergency legislation in accordance with articles 43 and 4 of the Covenant and were not subject to any time-limit. The Armed Forces (Special Powers) Act, in particular, had been in effect for 33 years. Moreover, like other similar legislation, it gave public officials an immunity from prosecution that ran counter to the Covenant.

(Mr. Aguilar)

43. Despite India's position, expressed in its reservation to article 1 of the Covenant (para. 11 of the report), that the right to self-determination applied only in a context of foreign domination, he believed that there was room for the democratic principle of autonomy even within a nation made up of separate states. He also wondered whether the Indian Government was giving some thought to withdrawing its other reservations to the Covenant, particularly in view of the 1990 Supreme Court ruling.

44. Mr. WENNERGREN said that he wondered whether India's position that adherence to self-determination was coexistent with the principle of sovereign equality (para. 10 of the report) was in fact tenable in the case, for instance, of the admission of a new state into the Union. There seemed to be no legal provision for such a state, once admitted, to leave the Union, and that element of compulsion seemed to be incompatible with democracy and sovereign equality. He would appreciate a fuller legal and philosophical explanation of the Indian Government's reconciliation of the two concepts. Also, it was not clear to him what constituted the "essence of national integrity" referred to in India's reservation to article 1 of the Covenant (para. 11 of the report). He found it difficult to understand, moreover, how the question of the validity of the Armed Forces (Special Powers) Act of 1958, whose provisions were clearly unconstitutional, could have been pending so long before a constitutional court.

45. Mr. SADI said that his chief concern was that, while India was certainly a lively democracy and while the Indian Government gave its absolute assurance that all the principles of the Covenant had been reflected in its laws, it had none the less entered so many reservations to the Covenant. Like Mrs. Higgins, he was still unsure of the actual status of the Covenant vis-à-vis the legislation of India, and he asked the representative to tell the Committee in clear terms.

46. It would be interesting to know if the Indian people at large were aware of their Government's ratification of the Covenant. Had there been any campaign to educate at least the legal profession on how the Covenant applied in India? The benefits of the Covenant could be lost for lack of knowledge.

47. Mr. RAMASWAMY (India), in response to the various questions about the legal and constitutional status of the Covenant in India, cited the well-known principle that under no circumstances did international law ever confer any rights upon the people of any country; international law being, in a sense, a voluntary agreement among nations to respect each other's laws in the interaction of human beings. Thus, article 51 of the Indian Constitution, which provided that the State should endeavour to promote international peace and security, maintain just and honourable international relations between nations, foster respect for international law and treaty obligations in the dealings of organized peoples with one another, and encourage settlement of international disputes by arbitration, was what was termed a directive principle of State policy, providing guidance for the executive and the legislature but not enforceable in the courts.

(Mr. Ramaswamy, India)

48. The Indian Constitution, unlike the British Constitution but like that of the United States, was written, and provided for a division of powers among the legislative, executive and judicial branches of government. Consequently, no rights existed in India other than those that were guaranteed in the Constitution, since all rights had been codified in the Constitution or in laws enacted under the Constitution. The Indian Constitution consisted of legislative entries dividing the topics of legislation between the states and the central Government, including a concurrent list containing issues on which both states and central Government could legislate. All topics of legislation must come under a legislative entry and all laws must be sanctioned by a legislative entry, although the parliament had a residuary power of legislation on all topics not covered by the legislative entries in the Constitution.

49. Consequently, the question of the Covenant having legal status did not arise in India. A citizen could, for instance, claim that his rights had been violated, but only on the basis of a particular law, not on the basis of an article of the Covenant. Similarly, the constitutionality of a law could be challenged on the ground that it violated a right guaranteed under the Constitution, but not a right set out in the Covenant. When a court examined challenges on the basis of a right guaranteed by the Constitution but restricted or denied by an ambiguous law, the court could overrule the law and interpret the right in question as including the full guarantees under the Covenant. If a right was not guaranteed in the Indian Constitution, nothing could be done. However, as Attorney General of India, fully familiar with the Constitution and the laws of his country, he could personally vouch for the fact that every aspect of every right guaranteed under the Covenant was guaranteed in India either in the Constitution or in a specific enactment.

The meeting rose at 1 p.m.

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of India (continued) (CCPR/C/37/Add.13)

1. At the invitation of the Chairman, Mr. Ramaswamy (India) took a place at the Committee table.

2. The CHAIRMAN said that the Indian delegation would proceed to answer questions held over from section I of the list of issues.

3. Mr. RAMASWAMY (India), replying to a question about the status of the Covenant in India with regard to the right of self-determination, said that, in India, principles of international law had no effect unless they constituted the law of the land. In practice, the rights embodied in the international principles underlying the Covenant were already guaranteed by Indian law.

4. Replying to the question concerning the scope of India's reservation to the Covenant on the question of self-determination, he stressed that territorial integrity and sovereignty must be the basis for that right. By definition, a group of people within a sovereign territory could not break away and form another nation. The Covenant, in the second sentence of article 1, clearly placed the right of self-determination in that context. That understanding was also contained in the International Covenant on Economic, Social and Cultural Rights.

5. He drew attention to paragraph 11 of the report, which quoted the text of India's reservation and made it clear that the term "self-determination" did not apply to citizens within Indian territory, but rather only to those living outside the territory of India under foreign domination.

6. The questions raised concerning the Armed Forces (Special Powers) Act also reflected a misunderstanding of the scope of that Act. The Indian Government had reason to believe that the agitation for secession in certain border states was being aided and abetted by foreign elements infiltrating into Indian territory. Referring to article 355 of the Indian Constitution on the protection of states against external aggression, he said that the maintenance of law and order under such circumstances must be enforced on a "war footing". Following alarming reports from those states, more stringent measures had become necessary in order to protect innocent people from being killed by terrorists.

7. Members of the Committee who had been provided the text of the Assam Police Powers Act by non-governmental organizations had not been fully informed about the nature of that legislation. Section 3 of the Act vested the power to declare a state a "disturbed area" in the Governor. If misused, that power was subject to judicial review. Section 4 (a) of the Act, which empowered the Governor to order the "use [of] force, even to the causing of death, against any person who was

(Mr. Ramaswamy, India)

acting in contravention of any law ... in force in the disturbed area" prohibited the assembly of five or more persons carrying firearms, ammunition or explosives. However, that prohibition could be exercised only after due warning was issued. It was in conformity with an older Indian law which authorized private citizens to retaliate in self-defence even if that meant shooting another person to death.

8. Once a person surrendered under the Armed Forces (Special Powers) Act, the army did not retain control over him but rather turned him over, along with any weapons or explosives found on his person, to the police, i.e., the civil authorities, at which stage the Code of Criminal Procedure applied. Moreover, when emergency police powers had gone into effect in Assam, a number of public interest lawyers had entered complaints of human rights violations before the high courts and relief had been granted.

9. The question had been raised as to whether a law sanctioning the right to shoot was not in violation of the Constitution and article 21 of the Covenant. The validity of the Armed Forces (Special Powers) Act had been challenged in the Assam courts as early as 1983. The case had been transferred to the New Delhi High Court, which had upheld the Act as valid.

10. When he had assumed the position of Attorney General, the Act had again been contested in the high courts, together with certain allegations of human rights violations by the army. He had argued the Government's case before a full bench of judges in the Assam High Court, which had upheld the validity of the Act and declared it binding on the state. As to whether statutory powers had been violated, arguments had been concluded in the high court and judgement had been reserved.

11. In reply to the question concerning public interest litigation in India, the extent to which it differed from the normal judicial procedure, and its relative advantages and disadvantages, he referred to article 32 of the Indian Constitution. Any citizen was entitled appeal directly to the Supreme Court in order to enforce his fundamental rights, including the rights of freedom of movement and expression, equal opportunity before the law and equal opportunity in public employment. In fact, with regard to equality before the law, the Indian Constitution affirmed the right of any member of the public to contest an arbitrary act of the Government which violated his rights. In those cases, the burden of proof was on the State. Where a large group of people could not afford to bring an action, any number of the public could file litigation on their behalf under the system of public interest litigation. In fact, proceedings could be initiated on the basis of an anonymous telephone call or a postcard to the Supreme Court. Moreover, under article 141 of the Indian Constitution, if a principle of law was decided as a result of public interest litigation, it became binding on all courts in the nation. Remedies for more unusual grievances could be pursued through the normal judicial system, where the cost of litigation was relatively low.

12. In reply to the question on how the Armed Forces (Special Powers) Act could be enacted without declaring an emergency (art. 4 of the Covenant), he said that the Act itself made provision for that.

(Mr. Ramaswamy, India)

13. In reply to the question as to where articles 14 and 17 of the Covenant were covered in the Indian Constitution, he said that the Code of Criminal Procedure made article 14 the law of the land. Article 21 of the Indian Constitution provided that no person could be deprived of his life or liberty except according to procedure established by law. In the 1970s, it had been further determined that that procedure should be reasonable, which meant that the concept of "reasonable procedure" could also be challenged in the Supreme Court or the high courts. He wished to add that the Criminal Procedures Code, adopted from the British code, was one of the finest in the world; it guaranteed, inter alia, public and speedy trials and the principle of equality. The principle of equality was further guaranteed by article 14 of the Constitution. Article 17 of the Covenant concerning the right to privacy was embodied in article 19 of the Indian Constitution. It was also guaranteed by the Criminal Procedures Code and other penal statutes governing arrests and search and seizure. Those statutes included a number of safeguards restricting the powers of the police to enter and search private homes.

14. Replying to a question concerning the implementation of legislation, he said that the Criminal Procedures Code was the bedrock of the Indian criminal justice system. In India, human rights violations did not exist per se; they were only violations of rights guaranteed by the Constitution or statutory provisions, for which specific remedies were fully available to all citizens. Therefore, no discrepancy existed between the legal text and actual practice.

15. Replying to a question on whether the Supreme Court and High Courts enjoyed greater confidence than the lower courts, he said that that was indeed the case. Moreover, the lower courts, such as the city civil courts and magistrate courts, had no jurisdiction to rule on the constitutionality of statutes or strike down arbitrary acts by the Government.

16. In response to the question of whether local courts were biased in ethnic terms, he noted that the Indian judiciary was known for its independence. Moreover the issue did not arise since India had no ethnic groups, as the concept was internationally understood.

17. Turning to the question of whether civil and political rights could remain suspended for an indefinite period, he said that the possibility of suspension occurred only in the event of an emergency. In fact the relevant legislation had recently been amended, and it was no longer possible to suspend the rights provided for under article 21 of the Constitution. Any suspension of other rights required presidential action and the approval of the legislature. In view of that procedure, as well as the relevant constitutional provisions, there was no possibility of indefinite suspension of powers.

18. Mrs. HIGGINS said that it was clear that the Terrorist and Disruptive Activities (Prevention) Act and the National Security (Amendment) Act provided for limitations in respect of the right of assembly, the courts and detention. Since those Acts appeared to constitute derogations from the provisions of the Covenant, it would be interesting to know why India had submitted no notification of derogation to the Committee, as it was bound to do under article 4 (3).

19. Mr. LALLAH said that the issue with which the Committee was concerned was the extent to which Indian legislation accorded with the Covenant. It appeared that certain legislation relating to disturbed areas was not in consonance with article 4, although the Indian Government had not submitted any reservation in respect of that article.

20. Mr. RAMASWAMY (India) said that the Constitution of India, which had been adopted as a reflection of the will of the people, predated India's accession to the Covenant. The provision under Indian legislation for preventive detention, a measure accepted under various legal systems, did not in itself constitute a violation of article 4 of the Covenant. Such legislation was generally recognized as being preventive rather than punitive. For example, restraint of the freedom of movement of the individual, as in the case of a fire or crowd control, could be construed as preventive detention, but would plainly not be punitive. With regard to the security of India, the National Security (Amendment) Act authorized preventive detention where a threa existed to the defence or security of India or where an individual entertained relations with foreign Powers, instances which were fully in accordance with standards of international law, particularly when account was taken of the careful scrutiny such cases were accorded by the Supreme Court. In practice, the Supreme Court authorized preventive detention in only a small percentage of cases. There was no doubt that Indian legislation did not contravene article 4 (1) of the Covenant.

State of emergency (article 4 of the Covenant) (section II of the list of issues)

21. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of India, namely: (a) whether the amendments to article 359 of the Constitution made it permissible to derogate in the state of Punjab from the right to life and the prohibition against torture as well as the other non-derogable rights mentioned in article 4 (2) of the Covenant, and, if so, whether the Government of India planned to adopt legislation to make its domestic legal regime in that regard consistent with its obligations under article 4 (2) of the Covenant; and (b) what safeguards and effective remedies were available to the individual during a state of emergency.

22. Mr. RAMASWAMY (India) said that the amendment providing for the suspension of article 21 of the Constitution referring to the right to life, had been superseded and that the position of law in India was in accord with article 4 of the Covenant. Even during a public emergency, the individual enjoyed all the safeguards and remedies that were available at other times.

23. Mr. AGUILAR, noting that paragraph 26 of the second periodic report of India (CCPR/C/37/Add.13), referred to the suspension of constitutional provisions in the event of a proclamation of emergency, asked why the Goverment of India had not notified the Committee of such an important derogation from the Covenant. Notwithstanding the comments by the representative of India, it appeared that the Constitution did, in fact, allow for major derogations from the Covenant, in which case the Committee would wish to know how an Indian citizen could avail him or herself before the courts of the rights provided for under article 4 of the Covenant. Further, it appeared that laws which derogated from the Constitution in

(Mr. Aguilar)

the event of a state of emergency could remain in effect after that emergency had terminated. He would welcome clarification of those points.

24. Mr. MYULLERSON said that the representative of India appeared to be saying that, notwithstanding the enactment of certain legislation in India, no state of emergency existed unless there was a threat to the life of the nation. In fact, an emergency existed, in the terms of the Covenant, whenever there were derogations from its provisions. It would be interesting to know whether the Government of India considered the implementation of the Armed Forces (Special Powers) Act to amount to the existence of a state of emergency. That Act, which authorized the use of force, even to the causing of death, against any person in contravention of any law, and further authorized arrests and searches without warrant, constituted a derogation from several articles of the Covenant. The authorization under the Act for the use of deadly force would appear to be close to constituting a derogation from article 6 of the Covenant, from which no derogation was allowable.

25. Mr. WAKO said that no derogation was possible from the provisions against torture. From his reading of the Constitution of India, there appeared to be no constitutional provision prohibiting torture. The only reference seemed to be in article 21, which guaranteed personal liberty, so that where a person had been detained, thus losing his personal liberty, it appeared possible that torture was theoretically permissible. The report of India noted that violation of personal liberty attracted the provisions of article 14 of the Constitution, given which he wished to know whether there was protection at a constitutional level against torture, or whether such protection was afforded by the courts or other means. In the later eventuality, the question would arise of whether the Constitution was indeed in accordance with article 4 of the Covenant.

26. Mr. RAMASWAMY (India) said that article 4 of the Covenant as such could not be the cause of action before an Indian court, since the Covenant per se was not embodied in Indian legislation. India's position was that its Constitution would guarantee the same rights as those provided for under the Covenant. With reference to the proclamation of an emergency, an individual had recourse to the courts to secure the right to liberty provided for under the Constitution. With regard to the constitutionality of legislation adopted in an emergency, it was possible that such legislation might be in conflict with the fundamental rights of the citizen; if that were the case the legislation would be struck down when the state of emergency was terminated.

27. In reply to Mr. Myullerson's question regarding section 4 of the Armed Forces (Special Powers) Act, he noted that article 6 (1) of the Covenant was limited in its applicability by the inclusion of the word "arbitrarily". Section 4 of the Act did not give army officers the right to fire upon civilians "arbitrarily", but only in extraordinary situations and under specific conditions. Moreover, the application of the Act in the absence of a national emergency was not a violation of article 4 of the Covenant because it was possible for the Government to declare an emergency situation in individual disturbed areas.

(Mr. Ramaswamy, India)

28. In reply to Mr. Wako's question regarding the absence of any prohibition of torture in the Indian Constitution, he noted that prisoners were nevertheless protected against torture because: (1) the prison administration was legally separate from the police force, so that ordinary police officers had no access to jails; (2) there were strict regulations in force regarding the treatment of prisoners; and (3) the Indian Supreme Court had expanded its interpretation of the right to "life and liberty" to include the right to peace and human dignity.

Section III: Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant)

29. The CHAIRMAN read out section III of the list of issues, concerning: (a) the effectiveness of the special provisions designed to promote the advancement of "any socially and educationally backward classes of citizens or the scheduled castes and the scheduled tribes", along with statistics on the participation of members of those groups and of women in the country's political and economic life; (b) whether the classification of "backwardness" was made solely on the basis of caste; and (c) restrictions on the rights of aliens.

30. Mr. RAMASWAMY (India) said that scheduled castes and scheduled tribes were specified by presidential orders under the provisions of articles 341 and 342 of the Indian Constitution. According to the 1981 census, about 105 million Indians (approximately 23.5 per cent of the population) were members of scheduled castes, while 54 million were members of scheduled tribes. The Government was required by the Constitution to reserve a certain number of posts and a certain number of seats in Parliament and in the state legislatures for members of scheduled castes and scheduled tribes. In addition, a series of five-year plans for the advancement of "backward" classes was a priority element of national policy, and high-level officers were appointed to deal with issues concerning scheduled castes and scheduled tribes and to take action against any violations of the safeguards provided for them under the Constitution. In addition, a national commission for scheduled castes and scheduled tribes acted as an advisory body on broad policy issues involving those groups.

31. Although the Indian Government had drawn up comprehensive guidelines containing preventive, punitive and rehabilitative measures to combat crimes against members of scheduled castes and scheduled tribes, it continued to receive reports of atrocities committed against such persons. In consequence, it had enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which had come into force on 30 January 1990. The Act specified the offences which were considered atrocities and provided for deterrent punishments for such offences, as well as preventive measures. In addition, states were encouraged to develop schemes for the economic and social rehabilitation of the victims of such offences.

32. Under the Constitution, seats were reserved for members of scheduled castes and scheduled tribes in the Lok Sabha and state legislatures in proportion to their numbers in the general population. That concession, originally granted for a

(Mr. Ramaswamy, India)

period of 10 years from the commencement of the Constitution, had subsequently been renewed every 10 years. There was no reservation of seats in the Rajya Sabha and state legislative councils. Statistics showed that as of 8 January 1990, 120 out of 543 seats were reserved for members of scheduled castes and scheduled tribes in the Lok Sabha, while 1,084 out of 4,047 seats were reserved for members of those groups in the legislative assembly. However, the actual representation of those groups was greater, since the legal measures for their advancement which had been in force for almost 40 years had enabled many members of scheduled castes and scheduled tribes to secure seats in the legislature on their own merits.

33. The Constitution also provided that the claims of members of scheduled castes and scheduled tribes should be taken into consideration in the appointment process for posts and services in connection with national or state affairs. As of 1 January 1989, among employees of the central Government, 18.24 per cent were members of scheduled castes and 4.98 per cent were members of scheduled tribes. As of 1 January 1988, among employees of All India Services (comprising the Indian Administrative Services and the Indian Police Services), over 16 per cent of the employees of each of those services were members of scheduled castes and scheduled tribes.

34. The Ministry of Welfare was responsible for overall policy and for the planning and co-ordination of development programmes for scheduled castes and scheduled tribes. Each central Ministry and department was responsible for sectoral programmes, and the Ministry of Welfare maintained liaison with central Ministries and state governments.

35. There had been a progressive increase in the participation of women in India's economic and political life. According to 1988 statistics, women represented 11.5 per cent of the workforce in the public sector and 18 per cent of the workforce in the private sector. The figures did not reflect the participation of women in the agricultural sector and in basic industries, which represented a significant segment of the Indian economy; in rural areas, virtually all women were employed in those sectors. Although women still represented less than 6 per cent of the employees in the top echelons of public administration, they were legally entitled to take qualifying examinations for such posts, so the low rate of representation of women in that area reflected the fact that relatively few women chose to take the examinations. In the area of politics, women held 26 out of 545 seats in the Lok Sabha as of May 1990 (compared to 14 out of 489 in 1952) and 25 out of 250 seats in the Rajya Sabha (compared to 15 out of 216 in 1952). Although there were no legal obstacles to the participation of women in politics, no seats were specifically reserved for women.

36. With respect to the question of caste as a criterion for "backwardness", it was generally true that historically and socially, certain castes had been considered "backward" in India. He did not wish to elaborate on the question, since related matters were currently before the Supreme Court.

(Mr. Ramaswamy, India)

37. With respect to the treatment of aliens, the Supreme Court had recently ruled that the rights of Indian citizens, and particularly the provisions of article 14 of the Covenant, would also apply to foreigners who were legally in the territory of India, with certain exceptions regarding the acquisition of property.

38. Mr. SADI expressed concern about reports that in India, female fetuses were often aborted because of a cultural tradition which encouraged families to have male children. Although he was sure that Indian law did not condone such a practice, he wondered whether any legal measures or public information campaigns had been instituted to combat that trend, whose prevalence was apparently increasing.

39. Mr. ANDO noted that in paragraph 24 of the report, it was stated that the Equal Remuneration Act had been "modified to prohibit discrimination against women not only in recruitment but also in relation to conditions of service". He wished to know how successful that amendment had been, and whether there was any remedy available for violations of its provisions.

40. Mr. RAMASWAMY (India) agreed that reports of the destruction of female fetuses were alarming, and noted that for the first time, men outnumbered women in India. Under existing law, abortion was illegal in India except under very specific conditions. The Government was currently developing an information campaign against the practice of identifying the sex of fetuses and aborting them on the basis of their sex.

41. In reply to Mr. Ando, he said that the Equal Remuneration Act had been in force for 14 years and that it appeared to be very effective. Any violations of the Act were subject to legal redress, and the extremely limited amount of litigation concerning alleged violations of the Act seemed to indicate that its provisions were rarely violated. The question of equal salary was not a major issue in India because women were employed only in certain job categories; they were not employed to do work for which they were not qualified.

42. Mr. LALLAH said that although Mr. Ramaswamy had indicated that the limited number of women in many job categories was the result of their free choice not to apply for jobs in those categories, it appeared that the judiciary was an area which would appeal to women. He would appreciate some information on the number of women judges and members of the bar in India.

43. Mr. MYULLERSON asked for further details on how membership in scheduled castes and scheduled tribes was determined in individual cases.

44. Mr. RAMASWAMY (India), replying to the question regarding women judges, said that there was one woman judge in the Supreme Court and that women were represented in large numbers in the various High Courts. Efforts were being made to ensure that those numbers were increased throughout the judicial system. Judges were normally recruited from the bar and, while there was no shortage of women members of the bar in urban areas, the proportion was significantly lower in rural areas.

(Mr. Ramaswamy, India)

45. With regard to Mr. Myullerson's question, he said that, prior to the adoption of the Constitution, there had been a system of aid to the scheduled castes and tribes. Subsequently the Constitution had made provision for representation of those castes and tribes in Parliament, and the President had powers to add to the schedule or make deletions from it.

Right to life (article 6 of the Covenant) (section IV of the list of issues)

46. The CHAIRMAN read out section IV of the list of issues concerning the second periodic report of India, namely: (a) the number of persons currently on death row, and the time that normally elapsed between the imposition and execution of the death sentence; (b) whether the death penalty had been extended to new offences since the submission of the initial report; (c) whether the death sentence could be imposed for crimes committed by persons below 18 years of age; (d) the rules and regulations governing the use of firearms by the police and security forces, and whether there had been any violations of those rules and regulations and, if so, what measures had been taken to prevent their recurrence; and (e) what progress had been made in reducing infant mortality in the period under review.

47. Mr. RAMASWAMY (India) said that no information was available regarding the number of persons currently on death row. With regard to the time that normally elapsed between the imposition and execution of the death sentence, he said that a condemned prisoner had a right to appeal to the High Court and to the Supreme Court against a death sentence imposed by a Sessions Court, and that a condemned prisoner could not be executed pending those appeals. Condemned prisoners also had a right to appeal for clemency to the Governor of the particular state under article 161 and to the President of India under article 72 of the Constitution. A recent ruling had established that, if there was an undue delay between sentencing and execution, the Supreme Court could commute a death penalty to a life sentence.

48. The death penalty had not been extended to any new offences since the submission of India's initial report, but the Narcotic Drugs and Psychotropic Substances Act (1985), as amended in 1989, did include the possibility of the imposition of a death sentence for repeat offences under the Act.

49. Under the Juvenile Justice Act (1986), a juvenile delinquent could not be sentenced to death. For the purposes of the Act, a juvenile was a female child who had not attained the age of 18 years and a male child who had not attained the age of 16 years. However, the discrepancy in age was currently under review.

50. Concerning the infant mortality rate, he said that the Government had taken steps to implement a package of activities aimed at setting up a network of primary health care institutions in rural areas and training medical and paramedical workers and traditional birth attendants. The primary health centres and subcentres were providing antinatal and postnatal care, and the immunization scheme had been expanded to provide pregnant mothers and infants with full coverage. Oral rehydration therapy was being promoted as a means of tackling morbidity and mortality due to dehydration in diarrhoea cases. Health education was being

(Mr. Ramaswamy, India)

provided to promote breastfeeding and proper weaning practices, and supplementary nutrition and prophylaxis against nutritional anaemia was gradually being increased under the scheme. The goal of reducing the infant mortality rate to below 60 per 1,000 live births had been set for the year 2000. Provided that the socio-economic conditions of the population, including female literacy and the availability of safe water supplies, improved, that goal would be attainable.

51. Mr. FODOR said that the second periodic report of India had, quite properly, focused on the question of the death penalty, but that the right to life had aspects not confined to article 6 of the Covenant. It would be useful to know what steps the Government was taking to counter the increasingly widespread phenomenon of political killing. According to information available to the Committee several thousand people had lost their lives in ethnic strife, and many had been killed when the security forces had used armed force to suppress protest. Could the representative of India confirm that that information was correct?

52. Referring to paragraph 34 (c) of the report, he asked what procedure was followed in cases where the death sentence was commuted to life imprisonment on grounds of delay. He would also be interested to learn whether the procedure was initiated ex officio by the court or whether it could be initiated by the accused.

53. Mr. AGUILAR said that the report contained no information on the serious derogations of article 6 by State organs and officials which seemed to have taken place on a considerable scale. He was particularly concerned by the many reported instances of "disappearances" and political killings. With regard to demonstrations, he asked whether there had been any formal investigations of deaths occurring when the police opened fire on unarmed demonstrators, and whether the provisions of the Penal Code had been applied.

54. In connection with the death penalty, he would welcome information on the procedures followed by the Supreme Court. He also wondered whether there were any differences in the practice followed by states in the northern and southern parts of the country.

55. Mr. WAKO said that the powers conferred on the authorities by the Armed Forces (Special Powers) Act went well beyond those provided in the Code of Conduct for Law Enforcement Officials, which stipulated that firearms could be used only as an extreme measure and in the event of armed resistance. In particular, article 4 of the Act seemed to be open to abuse.

56. Noting the immunity conferred under article 6 of the Act, he asked what remedies were available in cases in which a law enforcement officer exceeded the terms of his authority, and whether in particular the family of a person killed in the course of a demonstration had the right to sue the Government or the Armed Forces.

57. Turning to the question of deaths in custody, he asked whether the Government had taken steps to prevent what seemed to be a widespread abuse, and whether any proceedings had been initiated against police officers involved in such cases.

(Mr. Ramaswamy, India)

58. Finally, he said that he would be grateful for more information on the incidence of "dowry deaths", which seemed to be on the increase despite the Government's efforts to eradicate the problem, and on the practice of suttee.

59. Mr. LALLAH said that there seemed to have been no reply so far from the representative of India regarding the question of the rules and regulations governing the use of firearms by the police and security forces.

60. Referring to the comments made by Mr. Wako, he said that he would welcome clarification regarding the circumstances in which firearms could be used by law enforcement officers. He also wished to know whether the definition of an "assembly" within the terms of the Armed Forces (Special Powers) Act covered gatherings in private homes.

61. In conclusion, he said that the immunity conferred by article 6 of the Act seemed very dangerous in that it gave the central Government very wide discretionary powers vis-à-vis the right to life.

62. Mr. MYULLERSON said that, while recourse to the use of force could be legitimate in combating terrorism, it could not be justified against unarmed demonstrators. He wondered whether the Code of Conduct for Law Enforcement officials, and other related documents, were widely known in law enforcement circles in India.

The meeting rose at 6 p.m.

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Forty-first session

SUMMARY RECORD OF THE 1041st MEETING

Held at Headquarters, New York,
on Wednesday, 27 March 1991, at 10 a.m.

Chairman: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of India (continued) (CCPR/C/37/Add.13)

1. At the invitation of the Chairman, Mr. Ramaswamy (India) took a place at the Committee table.

2. The CHAIRMAN invited the representative of India to answer questions held over from the previous meeting relating to section IV of the list of issues.

3. Mr. RAMASWAMY (India) said that before answering the specific questions which had been asked, he wished to make two important points of a general nature. With regard to article 4 of the Covenant, he recalled that when acceding to the Covenant, India had expressed the clear reservation that it did so only subject to the provisions of articles 22, 23 and 24 of its Constitution, which permitted preventive detention. That reservation was final and therefore not a subject for discussion at the present time. Secondly, article 6 did not provide for an absolute prohibition on the taking of human life, but only on the taking of life arbitrarily. In extreme circumstances, and in accordance with procedures defined by law, death could be caused.

4. The members of the Committee who had asked about the excessive use of force or misuse of powers by the police or the army had failed to give details on any specific incidents, and many of the allegations made had come to his attention for the very first time. Where individual violations of human rights had been brought to the Government's attention, it had taken action. The very active press and human rights organizations in India, and the practice of public interest litigation, together ensured that virtually no violation of human rights went ignored. Nor were there any territorial or geographical constraints on individuals rights, since any individual could go directly to the Supreme Court. He assured the members of the Committee that the various cases to which they had referred the previous day would be communicated to and investigated by his Government.

5. Where alleged violations of killings in particular areas were concerned, members should bear in mind that parts of India, notably the border areas, were suffering terrorist outrages, some of them carried out by terrorists who wore the uniforms of the security forces in order to discredit the latter. The list included attacks on trains, lootings, kidnappings, threats against members of the security forces and intimidation of their families aimed at forcing them to desert, attempts by various terrorist organizations to set up a parallel authority and the levying by such organizations of, in effect, parallel taxes. Against such a background of killing and torture and a deliberate campaign to discredit the security forces, the Government had a duty to protect the nation.

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6. With regard to the questions concerning the provisions and precautions taken to prevent excessive use of force by the police or the army, specific enactments provided for action against such excesses and for punishment of the offenders. There had certainly been cases in which members of the police force had been brought to justice, either by the Government or by the courts.

7. With regard to the question of the use of firearms by army officers under the Armed Forces (Special Powers) Act, he drew attention to section 3 of that Act, which stipulated that armed forces could be used only if strictly necessary. Section 4 of the Act contained many restrictions, and indeed the powers under the Act were used only rarely.

8. He felt that the scope of the Armed Forces (Special Powers) Act had perhaps been misunderstood by some members of the Committee. Specifically, the Act applied, and permitted the use of arms only in a "disturbed area", which had to be declared as such by the Governor. Secondly, it did not apply to all army officers but only to those above a certain rank. Thirdly, it authorized the use of firearms by those officers only in cases of contravention of two specific types of law: either one forbidding the carrying of weapons or explosives or one prohibiting the assembly of five or more persons. Expressing the fear that that point, too, had been misunderstood the previous day, he stressed that the use of firearms was not authorized to break up any random assembly of five persons or more. Rather, it was authorized only when such an assembly had itself already been declared illegal under an order promulgated for a limited time by a magistrate.

9. Furthermore, section 7 of the Act did not give public servants total immunity. What it did was protect them from arbitrary prosecution in connection with the performance of their duties, but at the same time subjected that performance to scrutiny by the Government itself. If an officer had exceeded his powers, the Government would grant the right to prosecute that officer. If the Government were to refuse to do so, the courts could direct it to comply.

10. Turning to the questions on increasing numbers of cases of deaths in police custody and extrajudicial executions, he said he was unaware of any single case of extrajudicial execution. Latest statistics showed that 7,561 innocent civilians and police officers had been killed by terrorists, while around 2,000 terrorists had been killed (and 16,000 arrested). There had not, however, been any extrajudicial executions within the meaning of the question posed the previous day.

11. With regard to deaths in police custody, very strict rules of investigation were in place to examine any such occurrence. It was not true that the police could make secret arrests. If anyone was taken away by a policeman, the entire village would immediately be aware of it, and telegrams would be sent to the higher police authorities. Furthermore, as an experiment being carried out in southern India, legal aid lawyers were always on hand in police stations to assist those

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arrested. In addition, no one could be held in custody for more than 24 hours without appearing before a magistrate. Should a death in police custody occur, an independent figure such as a magistrate would carry out an investigation and make a preliminary report. He felt that the question was not justified, inasmuch as deaths in police custody were not in fact on the rise.

12. Turning to the questions posed under section IV (d) of the list of issues on the rules and regulations governing the use of firearms by the police and security forces, he explained that that issue was governed by various laws, including the Police Act, enactments based on such laws, and instructions based on the enactments, which were themselves set down in great detail in police manuals. There were specific regulations on the use of firearms to disperse unlawful assemblies and also strict rules governing the use of the army to assist a civil power such as the police. The army could be called on only by an official of the level of a district judge, and only in exceptional circumstances. Possession of firearms, including by the police force, was strictly controlled. The question had been asked whether there had been violations of those laws and regulations, but he was not aware of any cases in which a policeman had been prosecuted for excessive use of firearms. As a general rule, it could be said that the police force in India was a law-abiding one.

Treatment of prisoners and other detainees (articles 7, 8 and 10 of the Covenant) (section V of the list of issues)

13. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of India, namely: (a) detailed information regarding procedures for receiving complaints under the Bonded Labour System (Abolition) Act, 1976; (b) consideration to updating the Prisons Act, 1899; (c) controls to ensure that persons arrested or detained are not subjected to torture or to cruel, inhuman or degrading treatment; (d) machinery for carrying out an independent and impartial investigation into allegations of torture and of summary, arbitrary and extrajudicial executions, and independent investigations, if any, and their results; (e) information on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; (f) compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and accessibility of relevant regulations and directives to prisoners; (g) information on the scientific classification of prisoners with a view to preventing exposure to criminals during custody (para. 65 of the report); and (h) information on detention in institutions other than prisons and for reasons other than crimes (e.g. in psychiatric institutions).

14. Mr. RAMASWAMY (India) said that the Bonded Labour System (Abolition) Act was intended to put an end to the exploitation of certain sections of the population. Precisely because bonded labourers were among the weakest and poorest members of society, the Act avoided any complex, technical procedures for receiving complaints and instead made the states responsible for ascertaining whether bonded labour existed within their jurisdictions. The Act authorized the state Governments to

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confer such powers on a District Magistrate as were necessary for the Act to be properly enforced, and in turn enabled the District Magistrate to instruct an officer to take the necessary steps for this purpose. The Act also provided that if the District Magistrate became aware, either through his own investigation or through complaints, of a bonded labour system within his jurisdiction he had a duty to take such immediate action as might be necessary to eradicate it. "Vigilance committees" were established pursuant to section 13 of the Act for the purpose, inter alia, of advising the District Magistrate, providing for the economic and social rehabilitation of freed bonded labourers, and ensuring them adequate credit. If appropriate, a vigilance committee would also defend a suit against a freed bonded labourer.

15. With regard to the questions about prisons and prison management, he drew attention to the information in paragraphs 65 and 66 of the report and further explained that the management of prisons was a responsibility of the states under the Constitution, regulated by various acts and carried out in accordance with the rules deriving from them, which in turn were incorporated in the prison manuals of the various states and Union Territories.

16. Since India's initial report had been submitted, the All-India Committee on Jail Reforms had submitted its report and made certain recommendations on prison administration. Most of the recommendations had been implemented by the states and the Union Territories and those that had not were still under review. The All-India Committee had also recommended the appropriation of funds for the improvement of conditions for certain categories of prisoner, amenities such as water supply and sanitary facilities, training of prison staff, and vocational programmes to assist in the rehabilitation of prisoners. One of the recommendations of the All-India Committee had been that Parliament should enact new uniform and comprehensive legislation for the entire country and steps towards that end were being taken.

17. The state Governments had also been advised to appoint a Board of Visitors in each district, to visit all police lock-ups and ensure that prisoners under trial were lodged in separate facilities from those used for convicted inmates, as was already required by law.

18. With regard to section V (h) of the list of issues, he said that the Mental Health Act of 1987 (Act 14 of 1987) had replaced the outmoded Indian Lunacy Act of 1912. The Mental Health Act stated that no stigma should be attached to mentally ill persons and asserted that mental illness was curable. The Act provided for the treatment of the mentally ill and also protected citizens from being detained in the psychiatric hospitals or nursing homes without sufficient cause. The Act prescribed conditions for the licensing and control of psychiatric hospitals and nursing homes and provided for legal aid to the mentally ill at the expense of the State, in appropriate cases.

Liberty and security of the person (article 9 of the Covenant) (section VI of the list of issues)

19. The CHAIRMAN read out section VI of the list of issues concerning the second periodic report of India, namely: (a) the maximum length of detention for persons who remain in custody pending trial; and (b) legal, administrative or other safeguards against involuntary disappearances of persons, and cases of involuntary disappearances where the remedy of habeas corpus or other effective remedies have been successfully applied.

20. Mr. RAMASWAMY (India), referring to section VI (a), said that a police officer could not detain an accused person arrested without a warrant for more than 24 hours. If a police officer considered it necessary to detain an accused person for a longer period for the purpose of investigation, he could do so only after obtaining a special order from the Judicial Magistrate under section 167 of the Code of Criminal Procedure of 1973. The Judicial Magistrate could authorize the detention of the accused person in police custody for a period not exceeding 15 days. If the Judicial Magistrate was satisfied that, for the purpose of investigation, the accused person should be detained for a period longer than 15 days, he could authorize further detention. In such cases the accused would be detained in custody other than that of the police, and the total period of detention would not exceed 90 days when the investigation involved an offence punishable by death, life imprisonment or imprisonment for a period of not less than 10 years, and 60 days when the investigation related to any other offence.

21. The right to a speedy trial was guaranteed under article 21 of the Constitution. In 1986, the Full Bench of a High Court had ruled that an inordinately prolonged and callous delay of 10 years or more, due entirely to the prosecution's default in the context of the reversal of a clear aquittal on a capital charge, would be prejudicial per se to the accused, and the accused would be entitled to unconditional release.

22. With regard to section VI (b) of the list of issues, India had no system for collecting data on the number of cases in which habeas corpus had been effectively used. Habeas corpus was an effective remedy in cases involving disappearances. The Supreme Court had held that recourse to third-degree methods by police officers resulting in the death of a person in police custody was a serious offence which was aggravated by the fact that it was committed by a person who was supposed to protect citizens and not abuse authority. The punishment for such offences should be sufficiently severe so as to deter others from indulging in such behaviour.

23. The Supreme Court had affirmed beyond any doubt the State's responsibility for tortious acts committed by its employees in the course of their employment. Thus, in the case of police atrocities, the State had to pay compensation. In a recent case, the Supreme Court had ruled that state Government was obliged to pay 75,000 rupees to the mother of a nine-year-old child who had died as a result of beating and assault by a police officer.

Right to a fair trial (article 14) (section VII of the list of issues)

24. The CHAIRMAN read out section VII of the list of issues concerning the second periodic report of India, namely: (a) With reference to the cost of litigation and the delays involved in the judicial process, referred to in paragraph 80 of the report, information on progress, if any, toward finding workable and equitable solutions; and (b) information on resort to the free legal aid and advisory scheme under the Legal Services Authority Act, 1987, since the enactment of the legislation?

25. Mr. RAMASWAMY (India) said that a new forum with significant jurisdiction had been established to deal with disputes concerning public employment. Article 323A of the Constitution provided for adjudication, by administrative tribunals, of disputes relating to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of Union and state Governments. Under that authority, the Parliament had passed the Administrative Tribunals Act of 1985. Pursuant to that Act, the Union Government had set up the Central Administrative Tribunal in 1985 in order to provide speedy and inexpensive justice to central government employees in respect of service-related issues. The Central Administrative Tribunal had regular branches in the states. Section 4 (2) of the Act provided for the establishment of state administrative tribunals by the Union Government when a state Government made a specific request to that effect. Such administrative tribunals had jurisdiction and enjoyed the powers and authority of all courts - except those of the Supreme Court - with respect to service matters. As at January 1990, a total of 51,894 cases had been disposed of.

26. With regard to section VII (b), he said that, until recently, the lok adalats had been informal agencies and were overseen by state legal aid and advice boards. They were experimental alternative or informal systems for settling disputes and usually employed conciliatory methods. By the beginning of 1990, 3,129 lok adalats had been held. About a dozen lok adalats had been organized for cases pending before High Courts and, in 1989, a lok adalat had been set up for cases pending in the Supreme Court.

27. In the light of that experience, the parliament had passed the Legal Services Authorities Act (Act 39 of 1987). The purpose of the Act was to implement article 39A of the Constitution, which provided that the State would secure that the operation of the legal system promoted justice, on a basis of equal opportunity, and would, in particular, provide free legal aid to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities. The Act provided for legal aid on a statutory basis as well as for the establishment of legal service authorities at central, state and district levels. Those authorities would have their own funds received in the form of grants from the central Government and state Governments. Under the Legal Services Authorities Act, the lok adalats had acquired statutory authority, and every award of lok adalat was considered to be a decree of a civil court or an order of any other court or tribunal and was final and binding on all parties to the dispute.

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28. India also had a very successful legal aid movement in which judges, voluntary organizations and lawyers of repute took part. It might soon be the case that every lawyer in India would have an opportunity to spend part of his time serving in the legal aid movement.

Freedom of movement and expulsion of aliens (articles 12 and 13) (section VIII of the list of issues)

29. The CHAIRMAN read out section VIII of the list of issues concerning the second periodic report of India, namely: (a) information on legal provisions governing the expulsion of aliens and whether an appeal against an expulsion order has suspension effects; and (b) information on the success to date of the Government's strategy aimed at promoting the safe return of refugees to their countries of origin.

30. Mr. RAMASWAMY (India) said that section 3 of the Foreigners Act of 1946 specifically governed matters concerning the movement of foreigners in India. Under article 14 of the Constitution, a foreigner in India had the right of recourse to judicial process in the event of a violation of his rights. The courts were free to order any appropriate remedies, including interim orders with suspension effect.

31. With regard to the freedom of movement of aliens, the Supreme Court had recently ruled that the preventive detention of a foreign national who was not a resident of the country involved an element of international law and human rights. When an act of preventive detention involved a foreign national, it was a generally recognized principle in the Indian legal system that, in cases of doubt, the national rule was to be interpreted in accordance with the State's international obligations. The fundamental rights guaranteed in the Indian Constitution were in conformity with the rights guaranteed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to which India was a party.

32. In relation to section VIII (b) of the list of issues, the Government of India had provided the necessary cooperation for the amicable resolution of the refugee problem. Once the refugees' countries of origin established conditions conducive to the safe return of refugees to their homes, India facilitated their return. An agreement reached between India and Sri Lanka on 29 July 1987 had resulted in the repatriation of more than 25,000 Indian and Sri Lankan refugees over a period of 15 months without any untoward incident. The movement of refugees had been entirely voluntary, and the interests of those who had chosen not to be repatriated had been safeguarded.

Right to privacy (article 17 of the Covenant) (section IX of the list of issues)

33. The CHAIRMAN read out section IX of the list of issues concerning the second periodic report of India, namely: (a) information concerning the law and practice relating to permissible interference with the right to privacy; and (b) information on legislation concerning the collection and safeguarding of personal data.

34. Mr. RAMASWAMY (India) said that India had no single omnibus law on privacy as such. The right to privacy was governed by the Constitution and by the relevant civil and criminal laws. For example, trespass and defamation could be offences under the Indian Penal Code or they could be civil law offences and torts. In general, it was not easy for the authorities to interfere with the privacy of individuals.

35. With regard to section IX (b), data concerning personal information could be collected in India under the Census Act of 1948 and the Registration of Births and Deaths Act of 1969. Census officers were authorized to collect information on the basis of a schedule. The data collected from individuals included name, age, sex, marital status, language, mother tongue, religion, ability to read and write and educational level, economic status, scheduled caste or scheduled tribe, place of birth, resident or immigrant status, and children. The information collected was confidential, and only a statistical abstract of the total information collected was published. The collected information was currently being computerized. Persons or institutions requesting data for research purposes would have access only to group data. The Registration of Births and Deaths Act was similarly administered and was overseen by the Registrar General of India. Given the level of illiteracy in India, it could not be said that such data were complete.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section X of the list of issues)

36. The CHAIRMAN read out section X of the list of issues concerning the second periodic report of India, namely: (a) details on any laws and regulations governing the recognition of religions or religious sects by public authorities; and (b) controls on the freedom of the press and mass media in accordance with the law.

37. Mr. RAMASWAMY (India) said that India was a secular democratic republic consisting of several communities with different religions and religious faiths and beliefs. While there was no specific law or regulation governing recognition of religions or religious sects by public authorities, the Constitution of India and other relevant laws protected the religious rights of all persons.

38. The Religious Institutions (Prevention of Misuse) Act of 1988 (Act 41 of 1988) sought to prevent the misuse of religious institutions for political and other purposes.

39. Article 25 of the Constitution specified that the generic term "Hindu" was to be construed as covering persons professing the Sikh, Jain or Buddhist religions.

40. With regard to section X (b), freedom of the press and the mass media were covered under article 19 (1) of the Constitution. Those freedoms were subject to reasonable restrictions. The Press Council of India, a body constituted under the Press Council Act of 1978, was responsible for preserving the freedom of the press and maintaining and improving the standards of newspapers and news agencies in

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India. Thus, in so far as the members of the Press Council were involved in the press and newspaper publishing, any restrictions on the freedom of the press could be said to be self-imposed.

41. Films and the cinema were governed by the Cinematograph Act of 1952. Under section 4 of that Act, any person desiring to exhibit a film must apply to the Board for permission. After viewing the film, the Board might sanction the film for unrestricted public exhibition or for public exhibition restricted to adults, or it might request the applicant to edit the film as the Board deemed necessary before it approved the film for public exhibition, or it could refuse to approve the film for public exhibition.

42. Under the Cinematograph Act, a film would not be certified if it was against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involved defamation or contempt of court or was likely to incite the commission of an offence. A film would not be certified if it or any part of it presented an erroneous, distorted or misleading image of the social, cultural or political institutions of India.

43. The Press and Registration of Books Act of 1967 applied to the publication of books. The Office of the Registrar of Books established under that Act was responsible for enforcing the provisions of the Act.

44. In 1990, the parliament had passed the Prasar Bharati (Broadcasting Corporation of India) Act. That Act sought to place the mass media, such as television, in the corporate sector, taking it away from full government control. The Prasar Bharati Board would be responsible for the supervision, direction and management of the affairs of the Broadcasting Corporation of India.

Freedom of assembly and association (articles 21 and 22 of the Covenant) (section XI of the list of issues)

45. The CHAIRMAN read out section XI of the list of issues concerning the second periodic report of India, namely: information about the number, membership, organization and effectiveness of trade unions in India.

46. Mr. RAMASWAMY (India) said that trade unions were very active and effective in India. In 1984, the membership of Central Trade Union Organizations included more than 10,000 unions. The current membership of trade unions was approximately 10.25 million. Among workers, knowledge of trade union law was very high, which often made it possible for labour to settle its disputes without recourse to external legal aid.

Protection of the family and children (articles 23 and 24 of the Covenant) (sections XII of the list of issues)

47. The CHAIRMAN read out section XII of the list of issues concerning the second periodic report of India, namely: (a) the main features of the Commission of Sati

(Prevention) Act, 1987, and whether there had been any reported cases of sati since the passage of that Act or any prosecutions thereunder; (b) statistics to show the number of "dowry deaths" before and after enactment of the Dowry Prohibition (Amendment) Act, 1986, and the inclusion of the new offence and definition of "dowry death" in the Indian Penal Code; (c) the effectiveness to date of the Dowry Prohibition (Amendment) Act, 1986, and of the amendments to the Penal Code, Code of Criminal Procedure and other legislation relating to arranged marriage, child marriage and divorce; (d) information on the law and practice relating to the employment of minors; and (e) illustrations of the activities undertaken by the child welfare boards established pursuant to the Children Act, 1960.

48. Mr. RAMASWAMY (India) said that the Commission of Sati (Prevention) Act provided for the prevention of the commission of sati and made glorification of it, through any ceremony, procession or function, an offence. The offence of attempting to commit sati was liable to the same punishment as the offence of attempting to commit suicide under section 309 of the Indian Penal Code. District Magistrates had been given the power to prohibit the performance of any act leading to the commission of sati in any area where they were of the opinion that it was likely to be committed, and the Act provided for special courts to be constituted to try sati-related offences speedily and expeditiously. Responsibility for implementing the provisions of the Act lay with the state Government and Union Territory Administrations. No case of commission of sati had been reported since the passage of the Act.

49. With respect to section XII (b) and (c) of the list of issues, he explained that the Dowry Prohibition Act, 1961, had first been amended in 1984 to make the offence cognizable, bailable and non-compoundable, and following representations by voluntary organizations the Dowry Prohibition (Amendment) Act, 1984, had been further amended, along with amendments to the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act, to place the burden of proving that there had been no demand for dowry on the person who took or abetted the taking of dowry. An offence committed under the amended Act had been made non-bailable, and the Criminal Law (Second Amendment) Act, 1983, had also been amended to deal effectively not only with cases of dowry death but also with cruelty to married women.

50. A section had been added to the Indian Penal Code with a view to providing protection to women and discouraging atrocities and cruelty against them; it stipulated that anyone who subjected a woman to cruelty - whether the husband or a relative of the husband - should be punishable by imprisonment of up to three years and be liable to a fine. Under the new section, harassment of a woman with a view to coercing her, or any person related to her, to meet an unlawful demand for property or valuable security, or on account of failure by her or by any person related to her to meet such a demand, would amount to cruelty. Section 4 of the Dowry Prohibition Act, 1961, provided for punishment merely for the demand of dowry, and the new section of the Indian Penal Code - section 498-A - did not amount to double jeopardy.

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51. The other major amendment in the Dowry Prohibition (Amendment) Act, 1986, had been the insertion of a section - section 304-B of the Indian Penal Code - providing for punishment by imprisonment for from seven years to life of anyone found guilty of committing dowry death, defined as causing the death of a woman by burns, bodily injury, or in other than normal circumstances, within seven years of her marriage when it is shown that soon before her death she had been subjected to cruelty or harassment by her husband, or any relative of her husband, for or in connection with any demand for dowry. The Dowry Prohibition (Amendment) Act, 1986, had come into force on 19 November 1986, and responsibility for its implementation lay with state Governments and Union Territory Administrations.

52. His Government was aware that in spite of the law prohibiting child marriages the practice had continued in some parts of the country. It was deeply entrenched in certain sections of Indian society, and the Government had taken steps to educate the people about its consequences through the mass media, group discussions with rural women and the involvement of voluntary organizations. The provisions of the Child Marriage Restraint Act, 1929, amended in 1978, were sufficiently stringent, and no review of them was contemplated. His Government was seriously concerned about offences against women and it was felt that they were not merely a problem of law enforcement; they were also indicative of the disabilities and inequalities from which women suffered despite constitutional provisions for their equality, social justice and protection. The problem needed to be considered in a broader social framework, for increasing emphasis on women's emancipation without corresponding changes in social attitudes and institutions sometimes led to women being subjected to hostility and aggression. Improvement of the status of women could be brought about only through their full integration and participation in national development. The Indian Department of Women and Child Development operated a scheme that would assist organizations working to improve the status of women in preventing atrocities against them through education, publicity and research.

53. Turning to section XII (d) of the list of issues, he said that the Child Labour (Prohibition and Regulation) Act, 1986, prohibited the employment of children under the age of 14 in certain hazardous occupations and processes, and provided for the regulation of their conditions of work in all other jobs. Other labour legislation, such as the Factories Act, 1948, the Mines Act, 1952, and the Plantation Labour Act, 1951, specified the minimum age of employment and contained regulations concerning working conditions. The Government had a national policy on child labour to rehabilitate children withdrawn from prohibited employment and to provide education, health care and other services for working children.

54. Referring to section XII (e) of the list of issues, he said that India gave high priority to children's development. A National Children's Board planned and co-ordinated all essential services for children, and similar bodies had been established in all the states and Union Territories. There was also a National Children's Fund, a Special Nutrition Programme, Integrated Child Development Services, and programmes concerned with early childhood education and the provision of creches. The Children Act, 1960, which had provided for the establishment of child welfare boards to deal with neglected children, children's homes, special

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schools, observation homes and after-care organizations, had been replaced by the Juvenile Justice Act, 1986, which provided for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles and disposition thereof. The Act's emphasis was not on keeping a child in jail but on dealing with juveniles in an atmosphere different from that of the courts. Cases were to be brought before Juvenile Welfare Boards speedily, and while an inquiry was proceeding the juvenile, unless he was staying with his parents or a guardian, was to be sent to an observation home or place of safety. The Government was implementing a centrally sponsored scheme to assist in establishing and improving observation homes, juvenile homes and special homes, and to provide training activities.

Rights of persons belonging to minorities (article 27 of the Covenant) (section XIII of the list of issues)

55. The CHAIRMAN read out section XIII of the list of issues concerning the second periodic report of India, namely: (a) clarification of the statement in paragraph 134 of the report that the reference to "ethnic" minority did not apply to Indian society; (b) special factors or difficulties in the effective enjoyment by minorities of their rights under the Covenant; and (c) additional information on the work and functions of the Minorities Commission and its effectiveness.

56. Mr. RAMASWAMY (India) said that although there were religious and linguistic minorities in India, the Indian people formed a composite whole racially, and hence the concept of ethnic minorities and ethnic majority did not apply.

57. With regard to section XIII (b) of the list of issues, he said that all human and fundamental rights and mechanisms for redress were equally available to minorities, which, further, enjoyed a specific Constitutional right to establish and administer educational institutions, so there were no special factors or difficulties in the effective enjoyment of human rights by minorities in India.

58. Turning to section XIII (c), he said that a Minorities Commission had been set up in 1978 to safeguard the interests of minorities, whether based on religion or on language, and to maintain a constant vigil and review implementation of constitutional safeguards to different groups of minorities. The Commission had a Chairman and its members belonged to different minority communities. A Special Officer for Linguistic Minorities had been appointed under article 350B of the Indian Constitution to investigate all matters relating to safeguards provided for linguistic minorities. In 1983, the Government had established a Minorities Cell in accordance with a 15-point programme enunciated by the Prime Minister, administered by the Ministry of Welfare and implemented through state Governments and Union Territory Administrations as well as through central departments and ministries. The Minorities Cell ensured fuller participation by minorities in all aspects of national life, coordination and monitoring of implementation of the 15-point programme and expeditious action on minority grievances. Some states and Union Territories had also set up minority cells. The 15-point programme was aimed at preventing communal violence, promoting communal harmony, giving particular

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emphasis to the educational needs of minorities, giving the minorities special consideration in recruitment to services such as the state and central police forces, and ensuring that they received a fair and adequate share of benefits from development programmes.

59. Mr. WENNERGREN said that he had found nothing in the Indian Constitution, the initial report of India or its second periodic report about any measures that had been employed to give effect to the right set out in article 7 of the Covenant that no one should be subjected without his free consent to medical or scientific experimentation. There was also no mention in the Indian Constitution of the right to freedom of expression including freedom to seek, receive and impart information, as set out in article 19 of the Covenant. He would welcome some indication as to the degree of access to official information enjoyed by the general public and the media in India, especially in view of difficulties experienced by journalists in visiting Kashmir and in covering the predicament of the Naga people.

60. Mr. RAMASWAMY (India) agreed that there was no specific legislation in his country to the effect that a person should not be subjected to compulsory medical or scientific experimentation, but it was implied in article 21 of the Indian Constitution, which guaranteed liberty and life, and article 19, which guaranteed the right to move freely throughout the territory of India. Both articles had been interpreted by the courts to include the right to privacy and the right against trespass. The right to information was an integral part of freedom of expression, which freedom was guaranteed to all citizens under article 19 of the Constitution. All citizens in India had the right of access under the law to knowledge of all public documents other than official secrets. He regretted that he was not in a position to confirm or deny the allegation regarding media access to Kashmir, but he would obtain that information from his Government and communicate it to the Committee in due course.

61. Mrs. HIGGINS said that, while there were provisions in Indian law, notably in article 22 of the Indian Constitution, relating to the security of the person, which would in principle satisfy the requirements of article 9 of the Covenant, she was concerned over the fact that those guarantees had in certain areas been suspended as a result of special legislation and that they were in any event frequently ignored in practice despite excellent instruction from the Supreme Court. While the State party contended in paragraph 57 of the report that the Terrorist and Disruptive Activities (Prevention) Act, 1987, did not violate article 9 of the Covenant because it did not authorize the deprivation of liberty on grounds or in accordance with procedures other than those established by law, she felt obliged to point out that the existence of domestic legislation in itself did not necessarily guarantee compliance with the Covenant.

62. Under section 8 (2) of the National Security Act, 1980, there was no need to disclose the grounds of detention, and detention had to be reviewed by an advisory board within seven weeks from 10 days after the arrest; those periods were considerably longer than would be compatible with article 9 (4) of the Covenant. Under the Terrorist and Disruptive Activities (Prevention) Act, 1987, there was one-year detention for investigation of rather broadly defined offences in

circumstances in which bail was difficult to obtain. There was no provision under the National Security Act, 1980, requiring a person to be brought forward promptly. She noted in that connection that the United Kingdom had deemed it necessary to enter a derogation because of its concern that a seven-day gap before bringing persons to a judicial or other authority might not be compatible with the Covenant; substantially longer periods were involved in the case of India.

63. It was worrying that the Terrorist and Disruptive Activities (Prevention) Act, 1987, was being applied even in states where the Government was not facing armed opposition. State Governments had recently announced that the Act would be used against criminal groups, and in Gujerat more than 2,000 people had been detained under its provisions between its entry into force in 1986 and 1990.

64. Finally, she asked why section 3 of the Indian Constitution's 44th Amendment Act, which had obtained Parliamentary and Presidential approval in 1978, had still not been brought into force, and why it had been necessary to control access by the media to Kashmir, one of the areas affected by the legislation in question, if it was felt that that legislation was operating satisfactorily.

65. Mr. RAMASWAMY (India) replied that the Terrorist and Disruptive Activities (Prevention) Act was only a procedural enactment, not a law dealing with preventive detention or creating a new offence. Article 3 of the Act enumerated the specific disruptive activities that would be subject to punishment. One could not have an ordinary criminal court deal with cases of terrorism because of problems such as intimidation of witnesses. Provided the court procedure was properly announced and the bail conditions were appropriate, there was nothing in the Terrorist and Disruptive Activities (Prevention) Act, according to India's understanding of constitutional law and fairness, that violated article 9 of the Covenant. Article 9 dealt essentially with two points: liberty and security of person, and access to the courts. India had a legitimate concern to preserve its territorial integrity and could take steps to do so. In any case, the constitutionality of the Act had been challenged and was currently being reviewed by the Supreme Court.

66. He did not accept Mrs. Higgins' contention that access to the media was totally controlled. For security reasons, there might be some justifiable press restrictions, but he was unable at the moment to provide any details.

67. Ms. CHANET observed that the Terrorist and Disruptive Activities (Prevention) Act was a penal law that defined offences and determined procedure, and as such came under article 14 of the Covenant, to which India had entered no reservation. She asked how article 9 (1) of the Act, stating that the central Government or a state Government could, by notification in the Official Gazette, constitute one or more designated courts for a given area or case, was compatible with article 14 (1) of the Covenant, requiring that tribunals should be established by law. Furthermore, article 14 (1) of the Covenant established the publicity principle as the norm when it stipulated that hearings should be public except in special circumstances; whereas article 16 (1) of the Act established the secrecy principle as the norm when it stipulated that all proceedings should be conducted in camera

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except where an application was made for open hearings. Under article 16 of the Act, moreover, the identity of witnesses and the place where proceedings were to be held could be kept secret and none of the judgements were to be published. How could that be reconciled with the Covenant?

68. Mr. RAMASWAMY (India) observed that the import of article 14 of the Covenant was that all were entitled to a fair and public hearing, but it was quite a different matter to say that there had to be a single criminal procedure for all offences. In actuality, the designated courts established under the Terrorist and Disruptive Activities (Prevention) Act were perhaps the most impartial of all Indian courts because the judges appointed were officials with special experience, independence and fearlessness; and an unusual provision was made for appeal, on the facts and the law, directly to the Supreme Court. Article 136 of the Constitution normally required special leave, not often granted, for such direct appeal to the Supreme Court. Consequently, his Government had enacted legislation consonant with article 14 of the Covenant to provide a fair trial for the very serious offence of terrorism.

69. As to the public nature of the hearings, article 14 itself provided for specific exceptions. Secrecy was very important for the witnesses in terrorism cases and article 16 of the Act aimed primarily at protection, both of witnesses and of investigating officers, and sought to strike a balance between the requirements of publicity and of safety.

70. Mr. LALLAH, referring to the rights of the family and to equality between the sexes, emphasized that they were safeguarded not only by the provisions concerning equality in marriage under articles 23 and 24 of the Covenant, but also under articles 3, 2(1) and 26 of the Covenant, to which India had entered no reservations.

71. The concept of freedom of religion was not generally interpreted in India as sanctioning any derogation from basic rights. The practice of sati, sanctioned by religion but a gross violation of article 6 of the Covenant, was a case in point; and he was glad that the Indian Government had taken legislative action to prohibit sati.

72. It was his understanding that India had a plethora of family laws, although the Committee had been given no details. He asked the representative of India in his capacity as his country's Attorney General to give thought to ensuring that none of the rights in religious marriages should violate other fundamental human rights, including the fundamental right of equality before the law. That might affect Hindu personal law or Muslim personal law, under which polygamy was tolerated, or the laws allowing different treatment of the sexes as to the causes for divorce. He had been heartened to read in article 44 of the Indian Constitution that the promulgation of a uniform civil code for the people of India was contemplated at some future time, depending on political will.

73. Mr. RAMASWAMY (India) said that he agreed wholeheartedly that articles 2, 3, 23, 24 and 26 of the Covenant were relevant to the rights of the family and

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equality between the sexes. As he had said earlier, India's difficulty in reaching the goal of equality was more a social than a law enforcement problem. With regard to marriage, much progress had been made via legislation. The Constitution sought to strike a balance between the right to practise religion and the rights of the family. Once freedom of religion and conscience had been guaranteed for minorities, it became a political problem to develop an all-India civil code. The members of parliament, being mostly of one religion, had enacted majority legislation by amending the Hindu Marriage Act. Muslim marital law still needed to be amended, with regard, for instance, to alimony. One of his own dreams was a uniform civil code for the country.

74. Mr. SADI noted that Amnesty International, a respected international organization, had recently published a detailed account of alleged torture and extrajudicial executions in the state of Manipur. He felt that India should have an opportunity to respond to such serious allegations, perhaps in writing, to the Committee.

75. Mr. RAMASWAMY (India) observed that Mr. Sadi had raised a very sensitive issue, because the Indian Government, convinced that Amnesty International reports were one-sided and not impartial, did not recognize it as an official body with authority to supervise its activities. It would be recalled, incidentally, that he himself had acknowledged earlier that thousands had been killed by terrorists in the disturbed areas of the country and that the Government was trying to prevent such violence. However, if Mr. Sadi personally brought up any allegations, he would personally order a Government investigation into the matter and would inform Mr. Sadi of the outcome. In ratifying the Covenant, India had committed itself to making all rights available to all its citizens; and it had taken action on individual violations without, of course, having achieved Utopian conditions. India's judiciary was one of the best in the world, and its outstanding public interest litigation had in general uncovered all human rights violations, no matter where in India they occurred. The country as a whole was very sensitive to human rights and none were better sentinels of human rights than the Indian people themselves.

76. Mr. EL-SHAFEI, referring to article 9 of the Covenant, asked what protection there was against arbitrary detention and the violation of other protected rights, in view of the overly broad language of the Terrorist and Disruptive Activities (Prevention) Act, article 4 (2) of which defined disruptive activity as any action which questioned, disrupted or was intended to disrupt, either directly or indirectly, the sovereignty and territorial integrity of India. Also, what procedures were available to detainees for complaints against abuses while in detention? Had any such cases been brought, and what had been the outcome?

77. Regarding the declaration of areas as disturbed under the Armed Forces (Special Powers) Act, he noted that some declarations, such as those affecting the states of Assam and Manipur, had no time-limit, although it was difficult to conceive that areas could remain indefinitely disturbed. He would like to know if

(Mr. El-Shafei)

there was any statutory obligation to review such declarations, and if the central Government sought the approval of the state Government concerned in declaring it to be a disturbed area.

78. Mr. RAMASWAMY (India) observed that it was a general principle of administrative constitutional law that all statutory powers had to be exercised reasonably for a reasonable time, in good faith, and for the purposes for which the powers were intended. The declaration of areas as disturbed, being the exercise of a statutory power, was subject to judicial review if challenged at the time of the declaration.

79. The Armed Forces (Special Powers) Act itself contained safeguards. An area could be declared disturbed only so long as it continued to be disturbed, and the indefinite continuation of a declaration of an area as disturbed was also subject to judicial review. There was no statutory obligation to review such declarations, but rather a constitutional, administrative obligation. The purpose of such a power being the protection of the people against insurgents, the Government did not hesitate to repeal a declaration once it was satisfied that the situation in an area had returned to normal, and the Committee need therefore have no apprehension regarding the time-limit.

80. Originally, only the state Governments had the power to declare an area to be disturbed, but the Parliament had passed legislation (which had been challenged in the courts) giving the central Government concurrent, independent power to do so, so that the approval of the state in question was not needed. In practice, prior consultation did occur, as in the case of the state of Assam.

81. Regarding the provisions against arbitrary detention and the procedure for hearing the complaints of detainees, none were available under the Terrorist and Disruptive Activities (Prevention) Act which provided only for special trials, bail procedures and designated courts. Arrests were governed by the normal provisions of the Code of Criminal Procedure.

The meeting rose at 1 p.m.